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Appellate Court of Maryland
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RECORD EXTRACT OF APPELLANT

IN THE
APPELLATE COURT
OF MARYLAND

September Term 2023,
No. 61

JUSTIN HOLDER

Appellant

V.

BENJAMIN ESTES

Appellee

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

RECORD EXTRACT

Volume 5E

JUSTIN HOLDER
APPELLANT

IN THE CIRCUIT COURT OF MARYLAND FOR WASHINGTON COUNTY

BENJAMIN ESTES	*	
Plaintiff	*	
v.	*	
	*	CASE NO.: C-21-CV-20-000430
JUSTIN HOLDER, Et Al	*	
Defendant(s)	*	

* *

DEFENDANT JUSTIN HOLDER's OPPOSITION TO PLAINTIFF ESTES' MOTION FOR SUMMARY JUDGEMENT - HEARING REQUESTED

COMES NOW Defendant, Justin Kyle Holder, in proper person and files this Defendant Justin Holder's Opposition to Plaintiff Estes Motion for Summary Judgement - HEARING REQUESTED, and for reasons states:

INTRODUCTION

Summary Judgement is appropriate for judicial economy when no genuine dispute of material fact exists' and the movant is entitled to summary judgment as a matter of law. The Defendant Opposes Plaintiff Estes' Motion for Summary Judgement and in response renews his request for Summary Judgement on Count VI - Ejectment, see ***Exhibit A - Motion for Summary Judgement - Count VI - Ejectment*** incorporated herein by reference.[1]

The Honorable Court will find Plaintiff's ***Ex. 1 - Estes Affidavit*** is a sham, and there is NO ADMISSIBLE EVIDENCE of adverse possession prior to 2010 (the year when Plaintiff took possession of subject property). The Honorable Court will find the Plaintiff and Defendants (including their experts) agree that deed NN520 drew the Original boundary

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[1] Defendant's Motion for Summary Judgement on Ejectment was denied by the Court without so much as an opposition by the Plaintiff, see ***Exhibit A4 - Motion to Alter or Amend Judgement denying Justin Holder's Motion for Summary Judgement - Count VI - Ejectment*** attached hereto and incorporated herein by reference.

line that is in dispute. For the reasons and law stated herein the Court will find that the Defendants are secure in their claims that:

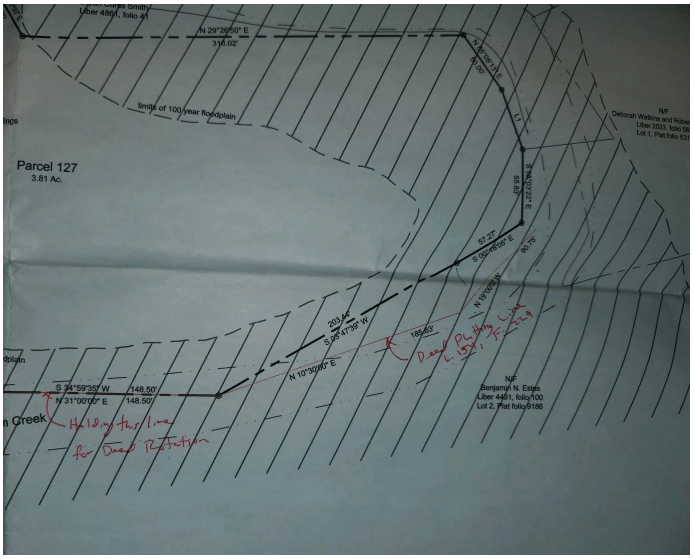
a) As a matter of law deed NN520 called to the natural monument of the Little Antietam Creek as a boundary; and

b) The Plaintiff has no admissible evidence to prove adverse possession prior to 2010 and as a matter of law Plaintiff' can not meet his burden to prove title by adverse possession to the subject property.

Or in the alternative if the Court is not prepared to decide the call in deed NN520, or decide Plaintiff Estes has NO EVIDENCE of adverse possession there exist a genuine dispute of material facts.

COURSES AND DISTANCES FACTUAL DISPUTE

1. On February 14th, 2020 Plaintiff Estes was provided a letter, and acknowledged receipt of same in the District Court from Expert Surveyor Frederic Frederick which stated in detail precisely how Mr. Frederick deviated from the title lines in the disputed area of the property dispute. ***See Exhibit A1 - Mr. Frederick February 13th, 2020 letter*** attached hereto and incorporated herein by reference.



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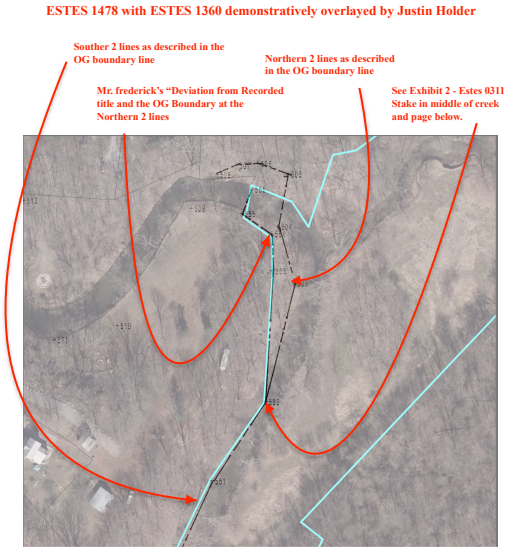
2. On November 13th of 2020 Frederic Frederick's survey crew came out and set a stake in the middle of the Little Antietam Creek at the Northern end of the 2nd line of the boundary in dispute see ***Ex. 1 - Estes Affidavit at ¶33.***. Mr. Estes testified to the same and provided a picture of the "stake" in discovery, see ***ExhibitA2 - Estes 0311 Stake in middle of creek*** attached hereto and incorporated herein by reference.

3. Plaintiff also produced Mr. John Dowling's work product in discovery, which is also supportive of the position of Defendant's in the instant case, see ***Exhibit A3 - ESTES RPD*** attached hereto and incorporated herein by reference.


ESTES 1478 with ESTES 1360 demonstratively overlayed by Justin Holder
Souther 2 lines as described in the OG boundary line
Northern 2 lines as described in the OG boundary line
Mr. frederick's "Deviation from Recorded title and the OG Boundary at the Northern 2 lines
See Exhibit 2 - Estes 0311 Stake in middle of creek and page below.

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4. Plaintiff was on notice he needed a second opinion of survey, and neglected to hire John Dowling until late September 2021. Mr. Dowling's opinion of title in ***Exhibit B - Deposition John Dowling 3-18-22 FINAL*** is supportive of ***Exhibit A1 - Mr. Frederick February 13th, 2020 letter***:

   a) "Well I mean, again, going back to the deviation, there is a deviation at the third line up from the creek. I mean I have said that consistently." Mr. John Dowling, Page 9 :15-20 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;***

   b) "I have no idea. I can't remember. I know I met with him in my office, and I said to him what the situation was, that there was a deviation from the common lines from over 100 years ago, out based on my conversation with Mr. Frederick, that he was holding a line of possession." Mr. John Dowling, Page 10 :13-18 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;***

   c) "Yes. I mean, if you look at that, there is a deviation from Frederick's to a portion that was outside of the title lines of the original conveyance to you. And going back to the one that you had me look at, at NN520, there is a portion of land at that position, I would say at the north end of your property where the lines deviate from the tract line is going back to the 1890's, and in your case, 1832." Mr. John Dowling, Page 11 :7-14 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;***

   d) "Well, if you look at the description of 1832, it fits hand in glove with the description on the Estes side from 1893....Well over a hundred years [Q. 1832, possibly 190 years?] ...yes, it's close to 190 years." Mr. John Dowling, Page 12:3-16 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;***

   e) "I don't know how many times I have to say it, but I clearly say that the lines to the survey, two lines above the creek deviate from the title lines. There is no question about that. {Q. I appreciate that.} I have said it more than once." Mr. John Dowling, Page 14:3-8 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;***

   f) "My charge that I was presented with was Mr. Frederick's didn't want to stand behind his recorded survey. When I looked at it, I said I would look at the title and look at the survey, and I'd look at other instruments and I'd come up with it. What I came up is like everything, the properties run together, historically, to a certain point, and then they deviate," Mr. John Dowling, Page 47:3-9 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;***

   g) "Obviously, he signed and sealed it, and he thinks it's correct, but he [Mr. Frederick] wouldn't testify in court that it was correct. And I am willing to testify in court that it matches the title lines, except for the one place that it

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deviates." Mr. John Dowling, Page 48:8-12 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;***

h) "If something came up, but my basic opinion is that the lines were the same until the 1993 deviation, and the properties fit together and they deviated there." Mr. John Dowling, Page 51:8-10 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL;*** and

i) Q. And the NN520 [deed] call to the creek is a monument? "It calls to the creek" Mr. John Dowling, Page 51:18-20 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL.***

FACTS FROM PLAINTIFF AFFIDAVIT - IN GENUINE DISPUTE

6. In Plaintiff's ***Ex. 1 - Estes Affidavit*** attached to the ESTES MSJ as Exhibit 1 (the "Plaintiff's Affidavit"), facts ¶¶1 through 14 Plaintiff references deeds, plats and boundaries. Specifically at ¶11 of Plaintiff's Affidavit, Estes affirms under penalties of perjury "....and the portion of the Estes Property primarily in dispute (the "Disputed Property") is highlighted with yellow highlighter." Plaintiff is referring to Exhibit 4 attached to ESTES MSJ, however Exhibit 4 does not appear to have "yellow highlighter", noting Exhibit 17 attached to ESTES MSJ does have a crosshatched area labeled deed overlap.

7. In Plaintiff's Affidavit at ¶15 there is a dispute that title to the entire Estes Property transferred to the Hopes, see Plaintiff's Affidavit at ¶11 and testimony of John Dowling.

8. In Plaintiff's Affidavit at ¶¶17 and 18 there is a dispute that title to the entire Estes Property transferred to Estes, see Plaintiff's Affidavit at ¶11. There is no dispute that Plaintiff Estes began occupation of a portion of the Estes Property in 2010.

9. In Plaintiff's Affidavit at ¶16 Estes affirms under penalties of perjury that Estes has "personal knowledge" about what the Hopes did from 1993 through 2010. In Defendant Justin Holders ***Exhibit C - Deposition - Benjamin Estes 4-30-21 (pages 37-44)*** Estes testifies under oath on page 39:15-20: "I haven't known you since childhood. I grew up in the woods of Maine and Vermont and Massachusetts before moving down here in, I believe, in 1998 or 2000. So it's impossible for me to have known you since childhood. That's certainly one lie."; and in ***Exhibit D - Deposition Benjamin Estes 11-23-21 (page 45)*** page 145:17-22 "As a junior in high school, I grew up in a tent reading chemistry books by firelight, went to college in Boston, didn't move down here until I was well into my 20's, didn't move out to Washington County, Keedysville, until probably 1998. So I assure you, I have not known you since childhood." How could the Plaintiff have "personal knowledge" of the Estes property from 1993 to 1998 (or 2000) that Hopes had "... exclusive, and actual possession of the Disputed Property and [the Hopes] were the only persons to occupy, maintain, or otherwise make use of the Disputed Property during that time frame." This same a dispute is applicable to ¶22 of Plaintiff's [SHAM]Affidavit.

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10. In Plaintiff's Affidavit ¶¶19 and 20 are hearsay, not "personal knowledge" and wholly inappropriate for a Motion for Summary Judgement.

11. In Plaintiff's Affidavit ¶21 the Plaintiff brings a fact that is in dispute. As Plaintiff describes the sdisputed property in ¶11 of Plaintiff's Affidavit as generally the Little Antietam Creek and banks, there is a stipulation in this case as to Plaintiff's request to exclude the Public 'writ large from Public Rights in the Little Antietam Creek.

12. In Plaintiff's Affidavit at ¶¶ 23 and 24, Estes baldly asserts Defendant Justin Holder trespassed and destroyed trees and vegetation on the "Estes property". In ¶11 of Plaintiff's Affidavit, Plaintiff acknowledges the property is in dispute. These facts are not appropriate for Summary Judgement. It is further disputed in Defendants answer under oath to the 2nd Amended Complaint that any trees, shrubs, bushes and/or vegetation were destroyed on the Estes property. See 2nd Amended Complaint and Answers at ¶¶11-17 generally.

13. In Plaintiff's Affidavit at ¶¶25, 27 and 28 are hearsay, which is controverted by Plaintiff's Affidavit at ¶30 and at ***Ex. 9 to ESTES MSJ*** because the video speaks for itself. Defendant Justin Holder is standing in hip waders in the Little Antietam Creek throughout the video, and at the end unambiguously states the Holder property is on one side of creek and the Estes property on the other. The statements and evidence contained in ¶¶25, 27, 29 and 30 contain a genuine dispute of a material fact as to where the boundary lines are and if any trees, shrubs, bushes or vegetation were cut, burned or otherwise destroyed on the Estes property. Defendant also refers to the various stipulations related to Public Rights in the Little Antietam Creek made in this litigation as to the relevance of the video Plaintiff's Affidavit at ¶30 refers to as ***Ex. 9 to ESTES MSJ.***

14. In Plaintiff's Affidavit at ¶¶ 26 and 29 Plaintiff describes a survey that shows the property that in ¶11 Plaintiff admits is "disputed"; and that he witnessed Justin Holder on the [disputed] Estes property. Plaintiff took a photo and claims Holder is on the Estes property, Defendant Holder says prove it.

15. In Plaintiff's Affidavit at ¶31 Plaintiff fails to say where this occurred specifically and the Court should take no cognizance of a fact stated without specificity.

16. In Plaintiff's Affidavit at ¶32 Plaintiff baldly asserts he has been provided no proof of a dispute, however Plaintiff provides ***Ex. 17 - Uncle Eddies 2021*** which must constitute SOME proof as to claims of property and refute opinions in the Frederic Fredericks survey work.

17. In Plaintiff's Affidavit at ¶33 Plaintiff confirms "On or around November 13, 2020, I had FSA place surveyor's flags and markers that clearly and visibly demarcated my property and which are described in the recorded deeds and surveys of my property. See Defendant Justin Holder's ***Exhibit A2 - Estes 0311 Stake in middle of creek*** as a picture of aforesaid "flags and markers". This in itself is dispositive of Plaintiff Estes claims to ownership of the entire Little Antietam Creek.

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GROUNDS AND AUTHORITIES - NATURAL MONUMENTS IN A DEED

"In Maryland '[t]he interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law.' *Webb v. Nowak,* 433 Md. 666, 72 A.3d 587, 596 (2013). An easement created by a deed, known as an express grant, is interpreted by applying traditional rules of contract interpretation to the conveying document. *See Long Green Valley Ass'n v. Bellevale Farms, Inc.,* 432 Md. 292, 68 A.3d 843, 855-56 (2013); *Chevy Chase Land Co. v. United States,* 355 Md. 110, 733 A.2d 1055, 1073 (1999) ('[T]he primary consideration in construing the scope of an express easement is the language of the grant.'). When interpreting express grants, 'a court should ascertain and give effect to the intention of the parties at the time the contract was made, if that be possible.' *Miller v. Kirkpatrick,* 377 Md. 335, 833 A.2d 536, 545 (2003) (quoting *Buckler v. Davis Sand & Gravel Corp.,* 221 Md. 532, 158 A.2d 319, 322 (1960)). Hence, the court's 'focal point is the language of the agreement itself[,] seeking to discern what a reasonable person in the position of the parties would have meant at the time it was effectuated.' *Long Green Valley,* 68 A.3d at 856 (internal citation omitted)."

Columbia Gas Transmission, LLC v. Haas, 341 F. Supp. 3d 607 - Dist. Court, D. Maryland (2018)

"Both deeds call to the boundaries of the creeks, *i.e.,* the bank or shorelines, not into the creek. 'As a general canon of boundary law, it is well-settled that a call to an adjoining boundary takes precedence over a metes and bounds description in the same instrument.' *Ski Roundtop, Inc. v. Wagerman,* 79 Md. App. 357, 367, 556 A.2d 1144 (1989). Thus, to the extent that any conflict exists by reason of course and distance descriptions, in the absence of any evidence of contrary intention, the calls control. *See Delphey v. Savage,* 227 Md. 373, 378, 177 A.2d 249 (1962) (calls to monuments given precedence over courses and distances); *Zawatsky Constr. Co. v. Feldman Dev. Corp.,* 203 Md. 182, 187, 100 A.2d 269 (1953); *Dundalk Holding Co. v. Easter,* 195 Md. 488, 495, 73 A.2d 877 (1950); *Wood v. Hildebrand,* 185 Md. 56, 60-61, 42 A.2d 919 (1945) ; *Conrad v. Williams,* 121 Md. 35, 40, 88 A. 36 (1913) ('[W]here the courses and distances in a grant do not agree with the call, the call will prevail and the courses and distances will be rejected.'); *Stewart v. May,* 111 Md. 162, 174, 73 A. 460 (1909); *Houck v. Loveall,* 8 Md. 63, 69 (1855). For other cases where early patents referred to lands bounding on and/or running with water courses, see *Thomas v. Godfrey,* 3 G. & J. 142 (1831); *Chamberlaine v. Crawford,* 1 H. & McH. 355 (1770); *Digges v. Coomes,* 1 H. & McH. 81 (1729). *Cf. Calhoun v. Hall,* 2 H. & McH. 416, 417 (1790) (describing a call including waters as 'to the mouth of a small gut, *and over the said gut.* ...' (emphasis added)).

Marquardt v. Papenfuse, 610 A. 2d 325 - MdApp (1992)

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"Reasons for These Rules — The natural presumption where a deed conveys land bordering on a stream or highway is, that the grantor means to convey what he owns, and not to reserve a strip of land of no value to him, but the loss of which to the grantee might be productive of great injury. He has power by apt words to reserve what and as much as he pleases, or so to frame the language of his conveyance as to limit the land conveyed to the line of the stream or highway, without extending further, and in all such cases, courts are bound to give effect to his expressed intention. But in the absence of words showing such an intention, it is not presumed that the grantor intended to retain in himself the fee to the street or stream when he has parted with the adjoining land. Therefore it may be said to be a universal rule, that a deed giving a stream as a boundary will convey title to the center of the stream or to low or high water mark, *depending upon how far the grantor's title extends.* By such a description the grantor will convey all that he owns, unless a contrary intent appears from the language of the deed.

The deed is taken most strongly against the grantor in the application of this rule and courts will not favor the presumption that he has retained title to the bed of the stream."

Bowie v. Western Maryland R. Terminal Co., 133 Md. 1 - 1918

"In order to establish title by adverse possession, 'a claimant must show continuous possession of the property for 20 years in an actual, open, notorious, exclusive, and hostile manner, under claim of title or ownership.' *Barchowsky,* 105 Md.App. at 241, 659 A.2d 347; *see Costello v. Staubitz,* 300 Md. 60, 67, 475 A.2d 1185 (1984); *East Washington Railway Co. v. Brooke,* 244 Md. 287, 294, 223 A.2d 599 (1966); *Goen v. Sansbury,* 219 Md. 289, 295, 149 A.2d 17 (1959); *Miceli v. Foley,* 83 Md.App. 541, 552, 575 A.2d 1249 (1990). In evaluating a claim, the pertinent inquiry is whether the claimant has proved the elements 'based on the claimant's "objective manifestation" of adverse use, rather than on the claimant's subjective intent.' *Barchowsky,* 105 Md.App. at 241, 659 A.2d 347 (quoting *Miceli,* 83 Md.App. at 552, 575 A.2d 1249). Moreover, the claimant bears the burden of proof. *Costello,* 300 Md. at 67, 475 A.2d 1185; *see Hungerford v. Hungerford,* 234 Md. 338, 340, 199 A.2d 209 (1964)."

Porter v. Schaffer, 728 A.2d 755, 126 Md. App. 237 (Ct. Spec. App. 1999).

Defendant Holder refers to his Grounds and Authorities section in ***Exhibit A4 - Motion to Alter or Amend Judgement denying Justin Holder's Motion for Summary Judgement - Count VI - Ejectment*** which is attached hereto and incorporated herein by reference.

ARGUMENT

Matter 1 - The Original Boundary

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The Court upon review of the evidence will find that there is no dispute between the parties as to when the original boundary in dispute was created. The deed from David Hess to Samuel Cost dated September 10th, 1832 and recorded at Liber N.N. folio 520 among the Land Records of Washington County, Maryland (deed "NN520") has been identified by both parties Experts and in answers to discovery, as being the instrument that created the boundary line in dispute. The plain language in deed NN520 calls to the Little Antietam Creek, and then 9 courses around the creek. The dispute is generally the interpretation of the deed call to the Little Antietam Creek (East side, West side, center) as the monument for all 9 courses or for specific Courses and Distances somewhere on the banks. Summary Judgement from the Court on the intent of Grantor David Hess in deed NN520 will save days of trial time and experts looking through old deeds.

In ***Exhibit E - Estes Answers to Uncle Eddies Interrogatories (Final)*** at number 24 Plaintiff Estes' clearly identifies the matter of law the Court can decide on Summary Judgment.

Interrogatory No. 24: If Plaintiff contends that David Hess of Montgomery, Ohio; did **NOT** intend by express language in indenture dated September 9th, 1832 and recorded at Liber N.N. Folio 520 of the Washington County Land Records, to grant all the land he owned up to the thread/center of the Little Antietam Creek when Grantor in the Granting Clause of aforesaid deed, described the land to be granted as "N23E 26p to a stone standing at the end of the line of Fellfoot Enlarged then, N77E 8p **to Little Antietam Creek**, then down said Creek the nine following courses:" followed by courses and distances generally following said creek around the peninsula shaped property depicted in definition (g); identify all factual evidence, witnesses, estimates, photographs, legal basis and other documents that tend to support the claim.

Answer 24: The boundary line described in the 1832 deed does not use Little Antietam Creek as a boundary. Rather, the 1832 deed uses specific courses and distances heading in the same general direction as the creek. As described by Fred Frederick at his deposition, when specific courses and distances are used, or where specific monuments, like stones, are identified, the surveyor uses those rather than following natural features like waterways. The 1832 Deed, rather than confirming that the boundary generally follows the creek, sets forth specific courses and distances for the shared boundary. Specifically, the 1832 Deed states:

> (4) North seventy seven degrees East eight perches to Little Antietam Creek; thence down said Creek ***the nine following courses***; (5) North twenty two degrees East seventeen perches; (6) North thirty one degrees East nine perches; (7) North tend and one half degrees East eleven and one half perches; (8) North nineteen degrees West five and a half perches; (9) South eighty degrees West seven perches; (10) South twenty seven degrees [illegible] fourteen and three fourths perches; (11) South seventy four degrees West six perches; (12) North fifty three and a half degrees West twenty two perches; (13) South four and a half degrees West twenty three perches…

16

Then, when the 1832 Deed wants to actually and expressly follow an existing physical landmark rather than specific courses and distances, it goes "into the center of the Turnpike Road, and with the center of the said Road South twenty eight degrees West thirty seven and a half perches…"

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In ***Exhibit F - April 27th deposition Frederic Frederick*** at page 71:17-21:

"Q I think I understand now. So if a deed was going to follow a creek, it would say something like, The following nine calls around the creek or something to that —

A Yes. Yes.".

Plaintiff Estes' ***Ex. 17 - Uncle Eddies 2021*** depicts Expert surveyor George Nagel's opinion of the boundary and intent of the NN520 deed. "It calls to the creek" Mr. John Dowling, Page 51:18-20 ***Exhibit B - Deposition John Dowling 3-18-22 FINAL.*** The law in Maryland prioritizing calls to natural monuments such as creeks is well stated in *Marquardt v. Papenfuse*, 610 A. 2d 325 - MdApp (1992) and *Bowie v. Western Maryland R. Terminal Co.,* 133 Md. 1 - 1918. Summary Judgement as to the intent of the Grantor in deed NN520 is appropriate and will serve the important goal of judicial economy in this litigation.

Matter 2 - Adverse Possession

The Court will also find the Plaintiff fails to provide a genuine dispute of fact, through admissible evidence that Plaintiff has adversely possessed the land in dispute. Honorable Joseph Michael testified he has personal knowledge the Estes property as described in the 2nd amended complaint was vacant, see ***Exhibit G - Deposition of Honorable Joseph Michael 2-15-22 (page 13-16)*** attached hereto and incorporated herein by reference. The State Fire Marshalls report describes a tragic fire at the Estes property in 2005, a true and accurate copy of page 1 is attached hereto, see ***Exhibit H - Fire Report - 21-05-121 (page 1)*** attached hereto and incorporated herein by reference. The land records of Montgomery County, Maryland reflect a "Deed of Trust" in which Maxwell B. Hope II and his son, Maxwell B. Hope II are "borrowers" were not living at 22 Mt. Hebron road in Keedysville,

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Maryland, see ***Exhibit I - Hope Mortgage Damascus - MD - Liber 33979 361*** attached hereto and incorporated herein by reference (the "Hope mortgage"). On folio 372 of the Hope mortgage, Maxwell B. Hope II and Maxwell B. Hope III sign to acknowledge "BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 13 of the Security Instrument and in any Rider executed by Borrow and recorded with it." On folio 366 of the Hope mortgage (page 6 of the Security Instrument) at section 6 "Occupancy", the borrowers agree:

> **6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

See further ***Exhibit D - Motion for Summary Judgement - Count VI - Ejectment*** attached hereto and incorporated heron by reference at page 4 "Undisputed Facts" section at ¶¶:

16. "I have personal knowledge that the "Estes Property" described in Plaintiff's Second Amended Complaint ¶2 was vacant and unoccupied from the year 2006 through 2009."

17. "I have personal knowledge that there is no person or party in actual possession of the Little Antietam Creek or Land beneath the waters of the Little Antietam Creek as it is depicted on Plat 9186 recorded among the land records of Washington County, Md."

These aforesaid and affirmed under personal knowledge 2 facts are not in genuine dispute. Plaintiff Estes affidavit included at ***Ex. 1 - Estes Affidavit*** at ¶¶ 16,19,20 and 22 contain hearsay evidence and is not admissible nor is it "personal knowledge". Plaintiff ***Ex. 1 - Estes Affidavit*** is a sham, as Plaintiff has testified on April 30th, 2021 and November 23rd, 2021 that he was living in Maine or Massachusetts during 1993 to at least 1998, see disputed fact 9 above. Therefore Mr. Estes is unable to provide any evidence of adverse possession prior to his occupation of the property in 2010, 10 years short of the 20 year statutory period for adverse possession. See ***Ex. 1 - Estes Affidavit*** at ¶17 "In 2010, I began leasing the Estes Property from the Hopes" and ¶18 "n 2013, I purchased the Estes Property from the Hopes." Plaintiff Estes

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is unable to bring a genuine dispute of fact to the fact finder and Plaintiff's claim of adverse possession must fail as a matter of law.

Matters still in dispute - Summary Judgement is inappropriate

Plaintiff Estes's request for summary judgement as to all Counts is wholly inappropriate. Count VI - Ejectment, pled in the alternative and mutually exclusive to Count V can not both be decided in favor of the Plaintiff. The Plaintiff's Motion for Summary Judgement (the "ESTES MSJ") is disingenuous at best in the affidavits and proffers made. There is a genuine dispute of fact that Plaintiff Estes can prove any damages, or that any damage actually occurred to land Plaintiff Estes claims, let alone Plaintiff can prove his title to. Plaintiff Estes can not prove his good paper title to any land south of the Spring Branch prior to 1888. The Defendant Justin Holder incorporates Defendant Deena Holders arguments and opposition to the ESTES MSJ as it relates to Counts I through IV, see "Facts from Plaintiff Affidavit in Dispute"section above for specific material facts still in genuine dispute.

CONCLUSION

The boundary[2] between the properties has remained consistent for 190 years until Mr. Frederick deviated in 1993. The experts all agree that Plaintiff has no title to land west of the deviation. As a matter of boundary law the Plaintiff has no title to land west of the Little Antietam Creek. Plaintiff can not come to court and prove his damages, if he can not prove

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[2] The option in Dowling affidavit for the boundary is an absurd perversion submitted to the Court, read carefully at ¶8 "I have superimposed a red line on the Uncle Eddies survey prepared by Mr. Nagel…**if** his S7544'06" West 129.61 line is the S79 West 7.9 perch line. *(Id.)*", ¶9 Mr. Dowling generally asserts calls to artificial monuments such as stones prevail over a call to a natural monument such as the creek and ¶10 "**Mr. Nagel did not plot the calls contained in the deed or the description of the deed.** The blue line I had superimposed on the Uncle Eddies shows where the calls would be **if** Mr. Nagel had plotted deed lines and **if** the 129.61 foot line was the 7.9 perch line." {Emphasis added on the 3 BIG IFs].

his title. If Plaintiff can prove any damages, he must prove those damages to the jury. Summary Judgement is appropriate as to Count VI - Ejectment as Plaintiff can not and will not meet his burden of proof of god title or adverse possession for 10 years, let alone 20.

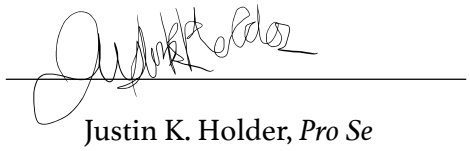
WHEREFORE, the Defendant humbly requests judgment as a matter of law in favor of the Defendant(s) and against the Plaintiff as to Count VI for Ejectment, because plaintiff is unable to bring forward sufficient evidence proving the strength of his title/claim to right and Plaintiff Estes has no admissible evidence to his adverse possession claims.

REQUEST FOR A HEARING

Honorable Clerk,
The Request for Dismissal is dispositive of the Plaintiff's Claim, and this Plaintiff does kindly request a hearing by Rule 2 - 311 (f), at a date convenient to the Honorable Court, on the Motion to Dismiss and Opposition thereto:

Justin K. Holder, *Pro Se*

Respectfully submitted,



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(240) 356-2008

Justin K. Holder

Pro se Litigator

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t: (240) 356-2008
Jholder2004@Gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of June 2022, a copy of the foregoing Defendant Justin Holder's Opposition to Plaintiff Estes Motion for Summary Judgement - HEARING REQUESTED was served via the MDEC system to :

Timothy Maloney, Esq.,
Brandy Peeples, Esq.,
Robert Kline, Esq.,
Justin Holder, *Pro Se;*

Justin K. Holder, *Pro Se*

Justin K. Holder

Pro se Litigator

308 W. Chapline St.
Sharpsburg, MD 21782
t: (240) 356-2008
Jholder2004@Gmail.com

33979 361

After Recording Return To:
George Mason Mortgage, LLC
4100 Monument Corner Drive
Farifax, VA 22030

MONTGOMERY COUNTY, MD
APPROVED BY
FEB 21 2007
$ NA RECORDATION TAX PAID
$ NA TRANSFER TAX PAID

2007 MAR 16 P 2:56
FILED
LORETTA E. KNIGHT
CLERK'S OFFICE
MONTGOMERY CO. MD.

Purchase Money

[Space Above This Line For Recording Data]

DEED OF TRUST

MIN: 100063300020086167

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **February 14, 2007** , together with all Riders to this document.

(B) "Borrower" is **MAXWELL B. HOPE II, AN UNMARRIED MAN AND MAXWELL B. HOPE III, AN UNMARRIE MAN**

Borrower is the trustor under this Security Instrument.

(C) "Lender" is **America East Mortgage, LLC**
Lender is a **Maryland Limited Liability Company** organized and existing under the laws of . Lender's address is
100 Church Street 2nd Floor, Frederick, Maryland 21701

IMP FD SURC 20.00
RECORDING FEE 20.00
TOTAL 40.00
Rest# MD06 Rcpt # 63428
LEK NVE Blk # 6355
Mar 16, 2007 02:53 PM

(D) "Trustee" is **Darren H. Chamblee**

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated **February 14, 2007** . The Note states that Borrower owes Lender **Three Hundred Sixteen Thousand and no/100** Dollars (U.S. $**316,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **March 01, 2037** .

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(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] Other(s) [specify]
[ ] 1-4 Family Rider	[ ] Biweekly Payment Rider	

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

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TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the **COUNTY** [Type of Recording Jurisdiction] of **MONTGOMERY** [Name of Recording Jurisdiction]:

THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATE IN THE COUNTY OF MONTGOMERY, STATE OF MARYLAND AND IS DESCRIBED AS FOLLOWS: LOT NUMBERED SIX (6) IN BLOCK LETTERED "F" IN THE SUBDIVISION KNOWN AS "MT. RADNOR HEIGHTS" AS PER PLAT THEREOF DULY RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN PLAT BOOK 69 AT PLAT NO. 6456. TAX ID# 12-00945760

which currently has the address of **9302 GUE ROAD** [Street]

DAMASCUS [City], Maryland **20872** [Zip Code] ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or

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partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest

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or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if

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the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although

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Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has—if any—with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is

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completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security

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Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable

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Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any

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Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale, assent to decree, and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall mail or cause Trustee to mail a notice of sale to Borrower in the manner prescribed by Applicable Law. Trustee shall give notice of sale by public advertisement and by such other means as required by Applicable Law. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale and by notice to any other persons as required by Applicable Law. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, Trustee's fees of 5.0000% of the gross sale price and reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

Borrower, in accordance with Title 14, chapter 200 of the Maryland Rules of Procedure, does hereby declare and assent to the passage of a decree to sell the Property in one or more parcels by the equity court having jurisdiction for the sale of the Property, and consents to the granting to any trustee appointed by the assent to decree of all the rights, powers and remedies granted to the Trustee in the Security Instrument together with any and all rights, powers and remedies granted by the decree. Neither the assent to decree nor the power of sale granted in this Section 22 shall be exhausted in the event the proceeding is dismissed before the payment in full of all sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender or Trustee, shall release this Security Instrument Instrument and mark the Note "paid" and return the Note to Borrower. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender, at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder by an instrument recorded in the city or county in which this Security Instrument is recorded. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Possession of the Property. Borrower shall have possession of the Property until Lender has given Borrower notice of default pursuant to Section 22 of this Security Instrument.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in pages 1 through 13 of this Security Instrument and in any Rider executed by Borrower and recorded with it.

MAXWELL B. HOPE II (Seal) -Borrower

MAXWELL B. HOPE III (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Frederick

State of Maryland County ss:

I Hereby Certify, That on this **14th** day of **February 2007**, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Frederick, personally appeared **MAXWELL B. HOPE II, AN UNMARRIED MAN AND MAXWELL B. HOPE III, AN UNMARRIED MAN**

known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge that he/she/they executed the same for the purposes therein contained.

AS WITNESS: my hand and notarial seal.

Notary Public

NANCY V. BRANDENBURG NOTARY PUBLIC FREDERICK COUNTY, MD

My commission expires: 12/01/07

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State of Maryland Frederick County ss:

I Hereby Certify, That on this 14th day of February, 2007, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Frederick, personally appeared Tod P. Salisbury,

the agent of the party secured by the foregoing Deed of Trust, and made oath in due form of law that the consideration recited in said Deed of Trust is true and bona fide as therein set forth, that any loan proceeds advanced for the purchase of the Property at the closing transaction by the secured party, was paid over and disbursed by the party or parties secured by the Deed of Trust to the Borrower or to the person responsible for disbursement of funds in the closing transaction or their respective agent at a time not later than the execution and delivery by the Borrower of this Deed of Trust; and also made oath that he is the agent of the party or parties secured and is duly authorized to make this affidavit.

AS WITNESS: my hand and notarial seal.

NANCY V. BRANDENBURG NOTARY PUBLIC FREDERICK COUNTY, MD

Notary Public

My commission expires: 12/01/07

Complete the following as appropriate:

This is to certify that this instrument was prepared by or under the supervision of

an attorney admitted to the practice of law by the Court of Appeals by the State of Maryland.

or

This is to certify that this instrument was prepared by one of the parties named in this instrument.

I Hereby Certify that the within instrument was prepared under the supervision of the undersigned attorney admitted to practice before the Court of Appeals of Maryland.

Patrick F. McLister
Attorney

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Assessor's Parcel Number:

After Recording Return To: **George Mason Mortgage, LLC**
4100 Monument Corner Drive
Farifax, VA 22030

Prepared By: **America East Mortgage, LLC**
100 Church Street 2nd Floor
Frederick, Maryland 21701

[Space Above This Line For Recording Data]

FIXED/ADJUSTABLE RATE RIDER

(LIBOR One-Year Index (As Published In *The Wall Street Journal*) - Rate Caps)

DOC ID #:

THIS FIXED/ADJUSTABLE RATE RIDER is made this **14th** day of **February 2007**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to **America East Mortgage, LLC, a Maryland Limited Liability Company** ("Lender") of the same date and covering the property described in the Security Instrument and located at:

9302 GUE ROAD, DAMASCUS, MD 20872
[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of **6.3750%**. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of **March 2012**, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index".

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding **Two and One Quarter** percentage points (**2.2500%**) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than **11.3750%** or less than **2.2500%**. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than **11.3750%** or less than **2.2500%**.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

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B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. UNTIL MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT IS DESCRIBED AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

2. AFTER MY INITIAL INTEREST RATE CHANGES UNDER THE TERMS STATED ABOVE, UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT DESCRIBED IN SECTION 11(A) ABOVE SHALL THEN CEASE TO BE IN EFFECT, AND UNIFORM COVENANT 18 OF THE SECURITY INSTRUMENT SHALL INSTEAD BE DESCRIBED AS FOLLOWS:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 33979, p. 0376, MSA_CE63_33936. Date available 03/26/2007. Printed 02/03/2022.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 33979, p. 0377, MSA_CE63_33936. Date available 03/26/2007. Printed 02/03/2022.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

I understand that for the Interest Only Period my monthly payments will not reduce the Principal balance on my loan. My monthly payments after the Interest Only Period will consist of both Principal and interest and will be higher unless I have made additional payments to reduce the Principal balance.

_____ (Seal)
MAXWELL B. HOPE II -Borrower

_____ (Seal)
MAXWELL B. HOPE III -Borrower

_____ (Seal)
-Borrower

_____ (Seal)
-Borrower

Lot numbered Six (6) in Block lettered "F" in the subdivision known as "Mt. Radnor Heights" as per plat thereof duly recorded among the Land Records of Montgomery County, Maryland in Plat Book 69 at Plat No. 6456.

MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 33979, p. 0378, MSA_CE63_33936. Date available 03/26/2007. Printed 02/03/2022.

MARYLAND STATE FIRE MARSHAL

Investigative Report

REDACTED

Case #: 21-05-121 **Print Date:** 4/25/2006
Case Investigator: Ernst, Edward
Subject: HOPE II, Maxwell B.-House Fire/ Fire Falility

Details:

Upon conducting my investigation I examined the exterior of the building. I observed the layout of the exterior of the residence. The residence was a two story stone exterior house with an attic and basement. The roof was a tin covered roof. There was a door that allowed access into the living room on the east side of the house. There was another door that allowed access to the stairway and a hallway that lead into the kitchen area on the south side of the residence. There also was also a glass sliding door that led to a deck the north side of the house. I observed what appeared to be an addition to the residence. The addidtion was a two story wood frame addition that added a living room on the first floor and a bed roo on the second floor.

While walking around the exterior I only observed one area where the fire had ventilated through the exterior wall around the roofline. This was consistent with where I was advised by Mr. Hope and his son was the room of origin. I observed the windows around the fire room and they were darkened by the smoke and heat of the fire.

I entered the residence on the east side entrance door into the living room. I observed the following; the floor above burned through and fell down into the living room. The exposed ceiling joists were charred along the top; this was consistent with the fire burning from the floor above. I observed heavy charring on the interior/exterior sides of the joist three rows over from the east wall of the living room. I walked further in the room into the kitchen. I observed no fire damage in the kitchen. I walked into the hallway and observed two rooms off the hallway. One room was a bathroom the other was a room where an exercise machine was placed in the center of the room. I entered the stairway on the north side of the residence. As I walked up the first flight of stairs and observed a clear line of demarcation around the landing between the first and second floor, this line of demarcation reveals the amount of heat and smoke build up on the second floor. As I walked up the second flight of stairs the line of demarcation appeared to have gotten darker on the wall. I entered the first room on the right in the hallway. This is the room that the owner Mr. Maxwell Hope Jr. stated he was sleeping in at the time of the fire. As I entered the room I observed all damage by the heat and smoke was consistent around the room. Everything in the room was covered with black soot from the smoke of the fire. Off the bedroom I observed a small room that was being used to store Hand Operated Radio equipment and long guns this room was part of the original house and had a window that allowed access to the addition and the bedroom. The wood window frame revealed a lot of heavy charring from the fire in the opposite room. All items were also covered with black soot from the heat and smoke of the fire. I entered another room and found a bunk bed and a small dresser. All items in this room were covered with dark black soot caused by the heat and smoke from fire. The line of demarcation in this room started approximately three feet from the floor. The ceiling was covered with the dark black soot also. This room appeared to be part of the addition. From this room I entered a room, which appeared to have been used as a laundry room. I found a washer and dryer in the right corner along the back wall. I also observed a bathroom entrance along the left side of the rear wall. I observed a lot of fire damage along the right wall in this room. This wall was where the entrance to the bedroom where the fire was reported to have originated. There was heavy charring around the doorway to this bedroom and all damage observed to this point was consistent with the fire starting in this room and the heat and smoke spreading throughout the second level of the house.

I could not safely make entry into the room of origin due to large holes that were burned in the floor. I requested the Special Operations Team to respond and assist with building floor supports and also placing plywood over the holes to allow the investigation in the room of origin to be conducted. After the room was made safe I entered to conduct the examination. I observed the room construction/layout. The walls were approximately four feet high. The ceiling was a peaked ceiling that was approximately nine feet in height. It appeared to be wood frame that was covered with drywall. As I observed the damage to the room from the entrance door I observed a burn pattern that was consistent with a complete room flashover, which is the ignition of all combustibles in the room once the flash point or ignition temperature was met. I observed the drywall and how it became brittle from the heat and fallen off the walls and ceiling. I observed the bed that was located just inside of the door in the room. The burn pattern was consistent with a fire that had built enough heat inside the room to cause the bed to reach its' ignition temperature and burn. I observed items at floor level that were destroyed to the point of making them unusable, but were still identifiable, such as a reel to reel recording device. stereo and other electronical devices. As I walked further in the room I observed on my right a metal frame of what appeared to be a couch that remained. On the left I observed a protected area on the floor, but was unsure what had been there due to total consumption of this item by the fire. I walked towards the rear wall and observed the burn damage. In the left corner of the bedroom I observed an area where the carpet was protected, but again was unable to place what items were there due to their consumption by the fire. I did observe the bottom of some type of cabinet or shelving unit. I followed the burn pattern across to the right corner of the room and determined heavier damage in this area. This was determined by examining the baseboard on the wall and also the holes in the floor. The baseboard in the right corner was burned away. I followed where the baseboard started/ended from

DFI 3 All information contained within this report is an approximation or a summarization unless expressed otherwise. Information contained herein is confidential and is not to be disseminated outside your agency unless its release is required pursuant to criminal or civil proceedings or statutory requirement.

IN THE CIRCUIT COURT FOR

WASHINGTON COUNTY, MARYLAND

Benjamin Estes,	)	
Plaintiff,	)	
V.	)	Case No.
Justin Holder, Et Al,	)	C-21-CV-20-000430
Defendants.	)	

Deposition of: Joseph Michael

February 15, 2022

Held at: 308 West Chapline Street (Via Zoom)

Sharpsburg, Maryland 21782

Jackie Smith, Court Reporter

P.O. Box 143

Boonsboro, Maryland 21713

(301) 326-5199

A P P E A R A N C E S

FOR THE PLAINTIFF:

Brendan Callahan, Esquire

FOR DEENA HOLDER:

Brandy Peeples, Esquire (Via Zoom)

PRO SE DEFENDANT:

Justin Holder

C O N T E N T S

JOSEPH MICHAEL: PAGE

Examination by Mr. Holder 4, 88

Examination by Ms. Peeples 81

Examination by Mr. Callahan 87

P R O C E E D I N G S

(9:00 a.m.)

JOSEPH MICHAEL, ESQUIRE,

having been first duly sworn, testified on oath as follows:

BY MR. HOLDER:

Q. It's Tuesday, February 15, 2022, at 9:02 a.m., the Joseph Michael deposition in Case No. 21-CV-20-000430, in the matter of Benjamin Estes versus Justin Holder, Et Al. The deponent is in the Zoom.

Good morning, Mr. Michael. Could you please state your name, for the record.

A. Joseph Michael.

Q. And, Mr. Michael, do you have anybody in the room with you?

A. I'm not going to tell you.

Q. Okay. This is a continuation of a deposition from December 6, 2021. And you were being deposed in that deposition as in your personal capacity only; was that correct?

A. That's what my understanding was. That's the only way I have been served.

Q. Correct. Okay. And did you do any work in relation to this property dispute as the State's Attorney or Deputy State's Attorney, I'm sorry?

from time to time, but I haven't spoken to him about this dispute at all.

Q. So the last time you really were involved with them was when you were dealing with the water situation with the Town of Keedysville for them?

A. No. I mean, that's a long time ago. That's the last time I was probably involved with Margie, but when Jamie was alive, I tried to visit him, and we were close. I spoke to him a few days before he died, and he would stop by my house.

Q. Okay. Is that how you knew about the fire at the Estes house or the previous owners?

A. No, no. That was just common knowledge. And, of course, we would have investigated because it involved the death of several people. So it was something that we would have known. Any time there is a death, we kind of have to keep it on the radar screen at the State's Attorneys Office, so that's how.

Q. I'm sorry. Go ahead.

A. No, go ahead.

Q. Were you aware of the condition of the house after the fire?

A. Well, there is a long period of time after the fire. I was aware of the condition of the house when it was for sale, before Ben bought it, which would

have been after the fire. So I was aware of the condition then because I had a friend or client that was looking at it to potentially buy it. I can't remember when that was. It was after the fire, but it wasn't in a fire damaged condition at that time.

Q. Do you know of any work done to it?

A. It had work done to it that was before Ben had it.

Q. Do you know about what time you were there visiting the property to look at it?

A. Maybe '07, '08. That's a guess though.

Q. Okay. And if I told you the fire was December 11th of 2005, does that seem accurate to you?

A. I wouldn't argue with you, no.

Q. Okay. So when you were there in '07 or '08 and it was restored, was anybody living there?

A. It seemed vacant. I can remember actually either being inside or looking inside. It may have been under work at that time because I can remember walking around the porches.

I had my friend and client with me. It seemed like I got in the bottom of the house. It might have been open because of construction, but I'm pretty sure it was on the market. I wouldn't have gone there if it wasn't on the market, snooping around. I had somebody

who was looking for a place, looking at it.

Q. Okay. And do you know who your friend and client was who was with you?

A. Yes. It was Michael Morland.

Q. And when you said "friend and client," that's the same person, he is just a friend?

A. Yes. Friend, neighbor, client, yes.

Q. Okay. And was a realtor there showing it to you or did you guys just sort of --

A. No. We just went and looked at it because it was on the market. I can't remember a realtor being there, not saying they weren't, but he was looking at a lot of properties, tire kicking.

Q. Did anybody make any statements to you about the property lines in that transaction?

A. No, not at all. We were looking at the house, and I know there was a little bit of property with it. If I looked, I may have pulled up a tax map. I frequently would, but I have no independent recollection of whether I did or not.

Sometimes there is a property map and acreage on the MLS, whatever that Maryland listing service is, and if there was something, I looked at it, but I don't recall.

Q. And you said you knew the property from

to you, they are not familiar to me. If I had had those documents, I think my opinion of a lot of things may have changed. And I wish you the best luck with your candidacy for judge, okay.

THE WITNESS: I appreciate that. Are we all done here? I will waive signature. I would ask anybody if there seems to be something confusing, that they reach out to me, but I will waive my signature on this.

(The deposition concluded at 11:50 a.m.)

WITNESS SIGNATURE WAIVED

IN THE CIRCUIT COURT FOR

WASHINGTON COUNTY, MARYLAND:

I, Jackie Smith, Court Reporter in and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct transcription of the deposition of Joseph Michael, Esquire, in the matter of Benjamin Estes vs. Justin Holder, Et Al, Case No. C-21-CV-20-000430 held on the 15th day of February, 2022.

Given under my hand this 13th of March, 2022.

Jackie Smith

Jackie Smith, Court Reporter
P.O. Box 143, Boonsboro, MD 21713
(301) 326-5199

My Commission Expires: March 30, 2024

Jun. 18. 2022 5:29PM No. 3853 P. 25
RECEIVED 06/18/2022 05:47PM

IN THE CIRCUIT COURT

FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,

Plaintiff,

v. Case No.: C-21-CV-20-000430

JUSTIN HOLDER,

Defendants.

DEPOSITION OF FREDERIC FREDERICK,

ZOOM VIDEOCONFERENCE

Tuesday, April 27, 2021

9:00 a.m.

Atkinson-Baker, a Veritext Company

(800) 288-3376

www.depo.com

Reported by: Sydney Crawford, RPR

File No.: AF03233

Deposition of FREDERIC FREDERICK, held at the offices of:

ZOOM VIDEOCONFERENCE

Pursuant to agreement, before Sydney Crawford, Notary Public in and for the State of Maryland.

A P P E A R A N C E S

ON BEHALF OF PLAINTIFF, JEFFREY YOUNG:

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ON BEHALF OF DEFENDANT, DEENA HOLDER AND UNCLE EDDIES BROKEDOWN PALACE, LLC:

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A P P E A R A N C E S (Continued)

ON BEHALF OF DEFENDANT, JUSTIN HOLDER:

JUSTIN HOLDER, PRO SE

ON BEHALF OF DEPONENT, FREDERIC FREDERICK:

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Also present: Adam Greivell, Esquire, Host

C O N T E N T

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(None marked.)

P R O C E E D I N G S

WHEREUPON,

FREDERIC FREDERICK,

having duly been sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows:

EXAMINATION

BY MR. HOLDER:

Q Good morning, Mr. Frederick.

How are you today?

A Good morning. Fine. Thank you.

Q I was sued by Benjamin Estes for six counts, trespassing, damage of trees. Under the Natural Resource Article 5-409, a public nuisance, quiet title and ejectment.

Are you familiar with that lawsuit?

A Only what you just told me and by deposition. I did not see anything and I -- I'm not aware of anything more.

Q Okay. Have you spoken to Benjamin Estes in the last year?

know...

Q Okay.

A And it does -- it does eventually go into the creek and then clearly both your deed, your old deed, and the Remsberg deed call for it going up on that spit of land, that little, where the yellow highlighted area -- I'm going to call that the most contested part of the land.

Q Okay.

A And -- and your deed says, "To a stone." And by the direction of your deed's bearing, it had to go on the west side, not in the creek, not on the east side. So all evidence of the old deeds tell me it's on the west side.

So I write it based on what the deeds are telling me and -- and believe it to be true.

Q I think I understand now. So if a deed was going to follow a creek, it would say something like, The following nine calls around the creek or something to that --

A Yes. Yes.

Q Okay. I understand. It's fine. I

appreciate it. Okay. So then you go on to say, "You want all -- own all the land on your side of the street. I get that, but the very small part, your neighbor owns."

Did you think that it would not be useful to -- to take court action to possess that very small part? What were you alluding to with capitalizing "very small"?

A In that it is a very small -- I think you said or somebody said that it's only about 10,000 square feet of land, and it's very small. That's a quarter of an acre. But --

Q Okay.

A But it's very small, but it's owned by somebody else. It's -- it's in their deed, and there's actually -- and I think I showed you when I was with you, you know, the old physical evidence there.

Q So when you say --

A The fence and the tree, and the fence post.

Q Right. Yeah. We did -- we went over

those in April, and I appreciated your time in the field. Is -- is a grantor able to grant land that's not within his title chain?

MS. JAMES: Objection.

Q Mr. Frederick, if I gave you a quitclaim for The White House, would you own The White House?

MR. NEAL: Objection.

MS. JAMES: Objection.

A No.

Q Okay. Thank you.

Mr. Frederick, I'd like to take a eight-minute break, if everybody could come back at 10:30, please. Is that okay with everybody?

MR. NEAL: Fine.

THE WITNESS: Yeah.

(Off the record.)

BY MR. HOLDER:

Q Okay. We're back on the record. Mr. Frederick, are you aware that Mr. Estes has pressed criminal trespass charges against me?

MS. JAMES: Objection. Hearsay.

I sell you 10 acres of 100 leaving me 90. So I clearly conveyed to you 10 acres and I should have 90. And then I have 90 surveyed and there's only 70 there. You still have your 10 because you came from that, you don't share in the loss.

Q Okay. I understand. Mr. Frederick, that's all the questions I have for you today. I appreciate your time. And you're released.

A Thank you very much.

MS. JAMES: Any other questions? Did anyone have any other questions for Mr. Frederick?

MR. NEAL: Unless Mr. Ruble has anything to add, I don't have anything further.

MR. RUBLE: No further questions, and Madam Stenographer, on behalf of my client, I do not order a transcript. I'll have to check with her and get back to you if you want one, but on the record today, I am not ordering one. Okay.

MR. NEAL: I take a copy.

(Reporter clarification.)

MS. JAMES: Also, in light of the filing referred to by Mr. Ruble and equally accessible to

all parties in this case, and the fact that the lines of questioning have clearly gone into expert testimony, have requested expert testimony from all parties present at this deposition, Mr. Frederick will not be voluntarily appearing for a second deposition, absent court order requiring him to do so.

Additionally, in light of Mr. Holder's April 7th, 2021 e-mail, coupled with the fact that no counsel has sought or re-requested any documents from Mr. Frederick in advance of this deposition, and that counsel has referred to and relied on documents prepared by Mr. Frederick related to this litigation throughout this deposition, Mr. Frederick will not be appearing voluntarily for a second deposition absent a court order requiring him to do so.

MR. HOLDER: Okay. Thank you. Thank you. Off the record. Thank you. Thank you so much. Plaintiff will order a copy of the transcript.

MS. JAMES: I will be in touch if we are

going to request a transcript, but not as of this moment.

(Off the record at 12:24 p.m.)

CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Sydney Crawford, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was not requested; and that I am neither counsel for related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set hand and affixed my notarial seal this 24th day of May, 2021.

My commission expires: May 15, 2024

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES **Plaintiff** **v.** **JUSTIN HOLDER, *et al.*** **Defendants**	**Case No. C-21-CV-20-000430**

ANSWERS TO INTERROGATORIES

TO: UNCLE EDDIES BROKEDOWN PALACE LLC, Defendant

FROM: BENJAMIN ESTES, Plaintiff

Pursuant to Maryland Rule 2-421, Plaintiff, Benjamin Estes ("Mr. Estes"), by his undersigned attorneys, Answers the Interrogatories propounded by Defendant Uncle Eddies Brokedown Palace LLC, as follows:

General Objections

1. Plaintiff objects to the Interrogatories (and instructions) to the extent the Interrogatories purport to impose requirements other than or in addition to the requirements of the Maryland Rules. Plaintiff intends to respond as required under the Maryland Rules and as otherwise directed by the Court. Plaintiff does not by answering the Interrogatories accede to, acknowledge, or accept Defendants' instructions.

2. Plaintiff objects to the Interrogatories to the extent the Interrogatories call for information covered by the attorney client privilege, the work product doctrine, or any other applicable privilege. Plaintiff will not give answers containing information subject to protection under the attorney client privilege or the work product doctrine.

3. Plaintiff objects to the Interrogatories to the extent they seek information that is proprietary or confidential to Plaintiff or any third party to which Plaintiff may be under the obligation of confidentiality.

4. Plaintiff objects to the Interrogatories to the extent they seek irrelevant information, i.e., information not reasonably calculated to the lead to admissible evidence.

Answer 22: Plat 10955 contains language indicating an intent by Deena Holder and Uncle Eddie's Brokedown Palace that the plat would operate as a deed for purposes of reconfiguring and identifying the boundaries of their respective properties, stating: "This deed and agreement of dedication shall be binding upon my/our grantees, assigns, successors, heirs and personal representatives." The execution and recordation of Plat 10955 by Deena Holder and Uncle Eddie's Brokedown Palace may also effectively confirm and declare the location of the boundary lines through application of doctrines such as waiver, estoppel, etc.

Interrogatory No. 23: If the Plaintiff contends Uncle Eddies Brokedown Palace LLC by Confirmatory Deed recorded at Liber 6468 Folio 345 et seq. of the Washington County Land Records and recorded title of predecessor, is **NOT** the record title holder to land described as "The Swamp" identify all factual evidence, witnesses, estimates, photographs, legal basis and other documents that tend to support the claim.

Answer 23: Said deed appears to rely upon an 1832 deed recorded at NN 520 as the source of its title and boundaries. The boundary line described in the 1832 deed does not use Little Antietam Creek as a boundary. Rather, the 1832 deed uses specific courses and distances heading in the same general direction as the creek. As described by Fred Frederick at his deposition, when specific courses and distances are used, or where specific monuments, like stones, are identified, the surveyor uses those rather than following natural features like waterways. The 1832 Deed, rather than confirming that the boundary generally follows the creek, sets forth specific courses and distances for the shared boundary. Specifically, the 1832 Deed states:

> (4) North seventy seven degrees East eight perches to Little Antietam Creek; thence down said Creek ***the nine following courses***; (5) North twenty two degrees East seventeen perches; (6) North thirty one degrees East nine perches; (7) North tend and one half degrees East eleven and one half perches; (8) North nineteen degrees West five and a half perches; (9) South eighty degrees West seven perches; (10) South twenty seven degrees [illegible] fourteen and three fourths perches; (11) South seventy four degrees West six perches; (12) North fifty three and a half degrees West twenty two perches; (13) South four and a half degrees West twenty three perches…

Then, when the 1832 Deed wants to actually and expressly follow an existing physical landmark rather than specific courses and distances, it goes "into the center of the Turnpike Road, and with the center of the said Road South twenty eight degrees West thirty seven and a half perches…"

Interrogatory No. 24: If Plaintiff contends that David Hess of Montgomery, Ohio; did **NOT** intend by express language in indenture dated September 9th, 1832 and recorded at Liber N.N. Folio 520 of the Washington County Land Records, to grant all the land he owned up to the thread/center of the Little Antietam Creek when Grantor in the Granting Clause of aforesaid deed, described the land to be granted as "N23E 26p to a stone standing at the end of the line of Fellfoot Enlarged then, N77E 8p **to Little Antietam Creek**, then down said Creek the nine following courses:" followed by courses and distances generally following said creek around the peninsula shaped property depicted in definition (g); identify all factual evidence, witnesses, estimates, photographs, legal basis and other documents that tend to support the claim.

Answer 24: The boundary line described in the 1832 deed does not use Little Antietam Creek as a boundary. Rather, the 1832 deed uses specific courses and distances heading in the same general direction as the creek. As described by Fred Frederick at his deposition, when specific courses and distances are used, or where specific monuments, like stones, are identified, the surveyor uses those rather than following natural features like waterways. The 1832 Deed, rather than confirming that the boundary generally follows the creek, sets forth specific courses and distances for the shared boundary. Specifically, the 1832 Deed states:

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Then, when the 1832 Deed wants to actually and expressly follow an existing physical landmark rather than specific courses and distances, it goes "into the center of the Turnpike Road, and with the center of the said Road South twenty eight degrees West thirty seven and a half perches…"

Interrogatory No. 25: If the Plaintiff contends that the Little Antietam Creek was not intended to be the monument for purposes of boundary identification and location at or near "The Swamp" , in land instrument located at Liber N.N. Folio 520 of the Washington County Land Records identify all factual evidence, witnesses, estimates, photographs, legal basis and other documents that tend to support the claim.

Answer 25: The boundary line described in the 1832 deed does not use Little Antietam Creek as a boundary. Rather, the 1832 deed uses specific courses and distances heading in the same general direction as the creek. As described by Fred Frederick at his deposition, when specific courses and distances are used, or where specific monuments, like stones, are identified, the surveyor uses those rather than following natural features like waterways. The 1832 Deed, rather than confirming that the boundary generally follows the creek, sets forth specific courses and distances for the shared boundary. Specifically, the 1832 Deed states:

> (4) North seventy seven degrees East eight perches to Little Antietam Creek; thence down said Creek ***the nine following courses***; (5) North twenty two degrees East seventeen perches; (6) North thirty one degrees East nine perches; (7) North tend and one half degrees East eleven and one half perches; (8) North nineteen degrees West five and a half perches; (9) South eighty degrees West seven perches; (10) South twenty seven degrees [illegible] fourteen and three fourths perches; (11) South seventy four degrees West six perches; (12) North fifty three and a half degrees West twenty two perches; (13) South four and a half degrees West twenty three perches…

Then, when the 1832 Deed wants to actually and expressly follow an existing physical landmark rather than specific courses and distances, it goes "into the center of the Turnpike Road, and with the center of the said Road South twenty eight degrees West thirty seven and a half perches…"

Interrogatory No. 26: If Plaintiff contends that Confirmatory Deed located at Liber 6468 Folio 345 et seq. Of the Washington County Land Records does not contain a valid and legal chain of

Plaintiff does not contend that the boundary line has been moved by virtue of accretion or revulsion.

I hereby certify under the penalties of perjury that all facts set forth herein are true to the best of my knowledge, information and belief.

Benjamin Estes

Respectfully submitted,

McNamee Hosea, P.A.

/s/ Mark W. Schweitzer
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Attorneys for the Plaintiff

IN THE CIRCUIT COURT FOR

WASHINGTON COUNTY, MARYLAND

Benjamin Estes,	)	
Plaintiff,	)	
V.	)	Case No.
Justin Holder, Et Al,	)	C-21-CV-20-000430
Defendants.	)	

Deposition of: Benjamin Estes

November 23, 2021

Held at: 308 West Chapline Street (Via Zoom)

Sharpsburg, Maryland 21782

Jackie Smith, Court Reporter

P.O. Box 143

Boonsboro, Maryland 21713

(301) 326-5199

A P P E A R A N C E S

FOR THE PLAINTIFF:

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FOR THE DEPARTMENT OF NATURAL RESOURCES:

Talley Kovacs, Esquire

Emily Vainieri, Esquire

FOR DEENA HOLDER:

Brandy Peeples, Esquire (Via Zoom)

PRO SE DEFENDANT:

Justin Holder

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P R O C E E D I N G S

(9:00 a.m.)

BENJAMIN ESTES,

having been first duly sworn, testified on oath as follows:

BY MR. HOLDER:

Q. Good morning, Mr. Estes. Thank you for your time here in this deposition. I know that you're a busy man. Do you work a lot of hours at your job?

A. Yes, I do.

Q. About how many hours do you work a week at your job?

A. Fifty or more.

Q. Does that limit your time you have to maintain your property?

A. No.

Q. Does your wife or children ever maintain your property?

A. Yes.

Q. Okay. Where do you delineate the limits of your property in Keedysville, Maryland?

A. The limits on my recorded plats, as referenced in my deed.

Q. Okay. I'm going to bring up an exhibit here for you, sir, and it's going to be your Interrogatory

think, right, to some area in that general area.

So I guess my question to you is, if the people that you say owned it own it and have owned it, then why would you go purchase a quitclaim deed? You, yourself, told me you didn't own it, and you cannot lie about it.

Q. Okay. Is this Interrogatory No. 19?

A. I don't know. You tell me. I don't have an interrogatory in front of me. You told me on numerous occasions that you don't own that property, that you are just the manager.

Q. Would it have been correct, that I told you that it's not my property; was I lying?

A. Mr. Holder, I don't know where the truth begins or ends with you. As [far as|farce] I can tell, your entire life is a lie. You said you have known me and know my father.

As a junior in high school, I grew up in a tent reading chemistry books by firelight, went to college in Boston, didn't move down here until I was well into my 20's, didn't move out to Washington County, Keedysville, until probably 1998. So I assure you, I have not known you since childhood.

So were you lying then or were you lying now? I don't know, sir. I don't know where the truth begins or ends with you. Are you telling the truth when you told

IN THE CIRCUIT COURT FOR
WASHINGTON COUNTY, MARYLAND:

I, Jackie Smith, Court Reporter in and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct transcription of the deposition of Benjamin Estes in the matter of Benjamin Estes vs. Justin Holder, Et Al, Case No. C-21-CV-20-000430 held on the 23rd day of November, 2021.

Given under my hand this 24th of December, 2021.

Jackie Smith

Jackie Smith, Court Reporter
P.O. Box 143, Boonsboro, MD 21713
(301) 326-5199

My Commission Expires: March 30, 2024

1

CIRCUIT COURT FOR WASHINGTON COUNTY
CIVIL DIVISION

JEFFREY YOUNG, Plaintiff,	:
v.	:Case No.:
DEENA HOLDER, ET AL.,	:C-21-CV-20-000371
Defendants.	:

Deposition of BENJAMIN ESTES
ZOOM VIDEOCONFERENCE
Friday, April 30, 2021
2:00 p.m.

Atkinson-Baker, a Veritext Company
(800) 288-3376
www.depo.com

Reported by: Sydney Crawford, RPR
File No.: AF03229

2

Deposition of BENJAMIN ESTES, held at the offices of:

ZOOM VIDEOCONFERENCE

Pursuant to agreement, before Sydney Crawford, Notary Public in and for the State of Maryland.

3

A P P E A R A N C E S

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A P P E A R A N C E S (Continued)

ON BEHALF OF DEFENDANT, JUSTIN HOLDER:

JUSTIN HOLDER, Pro Se

ON BEHALF OF DEPONENT, BENJAMIN ESTES:

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C O N T E N T

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(Retained by Pro Se Counsel.)

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P R O C E E D I N G S

WHEREUPON,

BENJAMIN ESTES,

having duly been sworn to tell the truth, the whole truth and nothing but the truth, testifies as follows:

MR. HOLDER: Hi, Mr. Estes, thank you for joining us today.

THE WITNESS: I guess it's nice to be here.

MR. HOLDER: Well, I apologize for taking up your time, but I was sued by a neighbor, Jeffrey Young in a property dispute.

Are you familiar with that term "property dispute"?

THE WITNESS: Yes, sir.

MR. HOLDER: Okay. So I've done some depositions before and Mr. Greivell's going to host this deposition, and he has the ability to share his screen, and he'll share his screen and there may be some documents on the screen. And

MR. RUBLE: And with -- Counsel, I'm going to take my leave now. Appreciate it, you letting me go first, Mr. Holder, and nice meeting you, Mr. Callahan. You-all take care.

MR. CALLAHAN: Madam reporter, I do not -- I'm not ordering a copy of the transcript. I'll talk to my client, Ms. Holder, but to the extent you want to know right now, today, my answer is I'm not ordering a copy; all right? Thank you, ma'am.

EXAMINATION

BY MR. HOLDER:

Q Hi, Mr. Estes.

A Yes, sir.

Q I'm back. Have you ever -- have I ever lied to you, Mr. Estes?

MR. CALLAHAN: Objection. He has no possible way of knowing that 100 percent. And that has nothing to do with why he's here today.

MR. HOLDER: Mr. Callahan?

MR. CALLAHAN: That objection being stated, that objection being stated, Mr. Estes, to

the extent that you can answer, you can answer, subject to that objection.

A I believe you have, yes.

Q On what occasion, sir?

MR. CALLAHAN: Objection. That has absolutely no relevance to why he's here today. Subject to that objection, you can answer that.

A This is regarding a case that you and I have, nothing to do with the Jeffrey Young case, so I don't see how this, me answering this question, can possibly lead to any -- any sort of admissible evidence in the Young case.

Q Mr. Estes, I do believe it will lead to calculated -- is calculated to lead to admissible evidence. And will you, please, answer the question?

MR. CALLAHAN: If it has nothing to do with the Jeffrey Young case, he's not going to answer anything about, you know, things that broad. If you have a question about the Jeffrey Young case, you can ask it.

MR. HOLDER: Mr. Callahan, are you

instructing your client not to answer this question?

MR. CALLAHAN: I am instructing him to answer questions about the Jeffrey Young case, and to the -- to the extent that if you lied to him about something that has nothing to do with the Jeffrey Young case, you know, how much time you got? He's not going to -- he's not going to sit here all day and list every possible lie that he thinks you've ever told. But, you know, broadly speaking, Ben, you can answer the question, quickly.

A Sure. Yeah. Sure. You said we grew up together in an e-mail, that you've known me since childhood. I haven't known you since childhood. I grew up in the woods of Maine and Vermont and Massachusetts before moving down here in, I believe, in 1998 or 2000. So it's impossible for me to have known you since childhood. That's certainly one lie.

Other lies pertain to the case that you and I both have together. You also said that you

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personally knew my father and you knew him for a very, very long time. My father is deceased. You may have met my father, but I have a doubt that you -- that you really had a real in-depth friendship with my father because my father actually lived with me.

MR. CALLAHAN: We are not getting into anything about the Jeffrey Young case at this point, and I'm going to ask you to move on, Mr. Holder?

MR. HOLDER: Mr. Callahan, my candor and your client's call to impeach my candor is a direct matter of this case. And if he has factual knowledge of a statement that I made that is not true, I would like to know what that is.

(Simultaneous cross-talking.)

MR. CALLAHAN: I spoke. Mr. Pembroke wanted to speak.

MR. PEMBROKE: Yeah. I'm raising an objection. The same objection that it doesn't relate to the case we're talking about. It's not material or relevant.

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MR. HOLDER: Okay. I understand.
BY MR. HOLDER:
Q So there's no -- you have no knowledge of any lies I would have told as it regards to the Young case, is that correct, Mr. Estes?
A I have no idea what you've said about the Young case, to be honest with you, I have no idea.
Q And you have no knowledge of any lies I've told about the Young case?
A No personal knowledge. No.
Q Okay. Okay. Thank you.
So when you moved to Keedysville in 1998, did you ever go back to the area where you're currently living now?
A No. Not in 1998, no. Nope.
Q Okay. Did you walk about Keedysville anywhere up Antietam Drive when you were a child?
MR. CALLAHAN: Objection. This has nothing to do -- excuse me. I just don't see how this has any relevance at all whatsoever to the matter at hand.

MR. HOLDER: Well, if you --

MR. PEMBROKE: Are we talking about the Jeffrey Young property, you said around Keedysville?

MR. HOLDER: The Jeffrey Young property and the Wagon Road would be close to Antietam Drive, and I was trying to ascertain whether or not your client has been in that area, and could possibly be a fact witness.

MR. PEMBROKE: Okay.

A I walked back one time to 28 Antietam Drive, probably in the year somewhere around 2000 to get to -- bridge. Went with a friend of mine who just wanted to show it to me. That's the only time that I can remember being on that part of town.

Q Okay. Who was the friend that you went there with, sir?

A I can't -- Billy Denny, Billy Denny.

Q Okay.

A I don't know where he is. I haven't talked to him in 10 years, but it was one time.

(Reporter clarification.)

I think he had -- he went out there and found his -- he used to go back there with his dogs and let them sort of swim and then I think his dog passed away, but that's neither here nor there, sorry.

Q Okay. When you got back to 28 Antietam Drive and you got to the railroad crossing, do you remember what it looked like?

A No. I really don't. I mean, I remember that the bridge wasn't there anymore. And that you could get down to the -- no. We didn't even get down to the water, we just walked back there. So I didn't go down to the water, but it was 20 years ago, so, no, I really don't.

Q And did you walk to the bridge that was closer to Main Street or the bridge that was closer to your property now at Lot 2, 22 Mount Piedmont Drive, sir?

A Close to mine.

Q And how exactly did you get there from Antietam Drive?

A I -- there used to be someone that there was a yellow house back there. I remember that. And then you walked down the railroad bridge before you got to that house, and it was down the old railroad track. That's what I remember from 20 years ago.

Q Okay. I appreciate that. And I appreciate that your memory may not be that well from 20 years, but I appreciate you giving it your best effort, sir, thank you.

Is there any other information that you might have about my character that you think would be relevant to this case?

A No. I don't know -- I really have no knowledge of -- any in-depth knowledge of what your case is about besides quiet title arguing with Jeffrey Young and that's about the extent of my knowledge. So that's -- so, no.

Q Have you ever talked to Sara Baker?

A I think I talked to her twice -- maybe twice in my life, twice in my life. Yeah.

Q Regarding -- regarding this case?

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MR. HOLDER: Okay. Well, I appreciate your time. You have the choice to agree to your transcript now, or you can review your transcript, and I think the court reporter will explain that to you.

A Uh-hum.

MR. HOLDER: Madam Court Reporter, I'm finished with the witness.

MR. CALLAHAN: Waive.

MR. HOLDER: I would like a transcript sent to Adam Grievell.

(Off the record at 5:12 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER—NOTARY PUBLIC

I, Sydney Crawford, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was requested; and that I am neither counsel for related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set hand and affixed my notarial seal this 11th day of July, 2021.

My commission expires: May 15, 2024

IN THE CIRCUIT COURT FOR
WASHINGTON COUNTY, MARYLAND

Benjamin Estes,	)	
Plaintiff,	)	
V.	)	Case No.
Justin Holder, Et Al,	)	C-21-CV-20-000430
Defendants.	)	

Deposition of: John Dowling
March 18, 2022

Held at: 308 West Chapline Street (Via Zoom)
Sharpsburg, Maryland 21782

Jackie Smith, Court Reporter
P.O. Box 143
Boonsboro, Maryland 21713
(301) 326-5199

A P P E A R A N C E S

PRO SE PLAINTIFF:

Benjamin Estes

PRO SE DEFENDANT:

Justin Holder

C O N T E N T S

JOHN DOWLING: PAGE

Examination by Mr. Holder 4

Examination by Mr. Estes 125

P R O C E E D I N G S

(9:00 a.m.)

JOHN DOWLING,

having been first duly sworn, testified on oath as follows:

EXAMINATION

BY MR. HOLDER:

Q. Today is Friday, March 18, 2022. This is a continuation of a deposition of plaintiff's expert, John Dowling, in Case C-21-CV-20-000430. It's continued from March 1st. Mr. Dowling asked that the deposition be continued. He hadn't reviewed pertinent documents to his opinions; specifically, a deed recorded at Liber NN Folio 520 of the Washington County land records, the opinion upon which Mr. George Nagel relied and he was here to rebut. Mr. Dowling, upon his embarrassment, asked for time. I gave him time and I asked for plaintiff to produce the witness. It's 9:02 a.m., and the witness has not entered the Zoom session.

MR. ESTES: He will be here in a second, Mr. Holder.

MR. HOLDER: I am going to go off the record, and pause, and wait until he shows up.

MR. ESTES: I need a video recording, sir.

in the preliminary plat of subdivision of Lot 2 for M. Yvonne and Maxwell B. Hope, prepared by Frederick, Seibert & Associates, Incorporated dated September 27, 2006, designated as Job No. 19627.2 recorded in plat Folio 9186 among the plat records for Washington County.

Mr. Dowling, does that accurately describe your opinion that you found?

A. Hang on a second.

MR. ESTES: I'm waiting on that recording, Mr. Holder. What are you so afraid of? That's what I don't understand.

MR. HOLDER: Your comments are very inappropriate, sir.

A. Yes.

Q. Okay. So the shared boundary line for the property of Uncle Eddie's Brokedown Palace is accurately described on Plat 9186?

A. Well, I mean, again, going back to the deviation, there is a deviation at the third line up from the creek. I mean, I have said that consistently.

Q. Well, that's why I was just asking. I believe this was maybe filed before you had provided an opinion to the plaintiff. It looks like the certificate of service on it is the 18th day of November.

Do you know when you provided an opinion to Mr.

Neal?

A. I have not provided a written opinion to anyone. I had a meeting with then counsel, and we talked about the issue.

Q. I believe Mr. Neal told me that meeting was December 1st.

A. Without going back and looking at records or anything like that, I had a meeting with him. I don't remember exactly.

Q. Okay. So it's possible he wrote this opinion prior to the meeting and he sort of just --

MR. ESTES: Objection.

THE WITNESS: I have no idea. I can't remember. I know I met with him in my office, and I said to him what the situation was, that there was a deviation from the common lines from over 100 years ago, but based on my conversation with Mr. Frederick, that he was holding a line of possession.

BY MR. HOLDER:

Q. And that's going to be what is the line between the blaze tree and the two fence posts before it goes back into the second line coming from the south to the north?

A. As I said, it's the third line up from the railroad.

Q. Okay. And then on the common lines, there's only two lines there before it gets to the stone near the bank of the creek where on Frederick's survey there's three lines?

A. Until it gets --

Q. Where it crosses the creek there. I'm sorry?

A. Yes. I mean, if you look at that, there is a deviation from Frederick's to a portion that was outside of the title lines of the original conveyance to you. And going back into one that you had me look at, at NN520, there is a portion of land at that position, I would say at the north end of your property where the lines deviate from the tract line is going back to the 1890s, and in your case, 1832.

Q. Would it be fair to say that the NN520 deed is the senior deed?

A. I wouldn't characterize it. I would characterize it that it's an older deed.

Q. Have you found a deed in land records in your research older than NN520 where that shared boundary at the four lines is?

A. As I have consistently said, I didn't think, from this particular situation, that it was worthwhile going back any where further than the 1890s.

Q. So you were hired to rebut George Nagel's

opinion, who took the title back at 1832, but you didn't find it appropriate?

A. Well, if you look at the description of 1832, it fits hand in glove with the description on the Estes side from 1893.

Q. The four courses coming up the creek from the railroad, those four lines?

A. They are the same.

Q. They are the same for hundreds of years, almost 200?

A. Well over a hundred years.

Q. 1832, possibly 190 years?

A. Well, I will defer to your superior -- yes, I'd have to write the two down and see where it is, whatever the distance is, but yes, it's close to 190 years.

Q. So would it be fair to say in the northern end of Plat 9186, it is not accurate to describe the title lines?

A. It's accurate in the sense that, again, as I have said consistently -- excuse me. Hang on one second while I dispose of this. I thought I had it muted. I apologize.

If you look at the 1832 description, it runs common with the descriptions on the Estes side, but then

MR. ESTES: I will object. This goes well outside the scope of my --

THE WITNESS: I don't know how many times I have to say it, but I clearly say that the lines to the survey, two lines above the creek deviate from the title lines. There is no question about that.

Q. I appreciate that.

A. I have said it more than once.

Q. Okay. That was the answer I was looking for. I appreciate that.

And down here in the opinion, it says, among other things, Mr. Dowling is expected to opine that a number of factors contributed to his opinion that the shared boundary line is consistent with Plat 9186, including the title deeds contain specific courses and distances for the shared boundary line. The title deeds do not indicate that the shared boundary line is binding on the creek and the existence of the fence line and the location of the starting point of the description.

Did you find that fence line located in any prior title deeds when you did your prior title work?

A. No. There is nothing in the title work which says that there is a fence line right there, but it's, clearly, for over 20 years from earlier work, that the line was in place. It was in place. It goes back to

west than either Frederick or Nagel has shown on any of their previous surveys, but that's holding that position, so that makes me somewhat suspicious. And also, the fact that the calls in all the descriptions are for something at the west end of the abutment, not in the stream. And I am looking at Nagel's, and he seems to have that line ending in the stream, and then he runs out the center of the stream, which I don't think honors the calls.

So, yes, if and when this goes to trial and he produces survey evidence to show that the BQT stone is, indeed, the stone that was called for in the 1832 survey, you know, it could be found, a stone, at the beginning of that survey down closer to the turnpike, I would have to say, you know, I would have to see the evidence. And then if he has the evidence, that would rule the day.

Q. So my understanding is, you agree that the title deed the NN520 does call for a stone in that general location. You just want to find some other monumentation to actually confirm that that stone is, in fact, the stone that was called for?

A. Yes. It calls for a stone. That's the end of the third line of NN520, and it calls for a stone.

Q. I pulled up the NN520 deed. It was exhibit

expected -- they told me you were going to opine about Mr. Frederick's testimony.

A. My charge that I was presented with was Mr. Frederick's didn't want to stand behind his recorded survey. When I looked at it, I said I would look at the title and look at the survey, and I'd look at other instruments and I'd come up with it. What I came up is like everything, the properties run together, historically, to a certain point, and then they deviate, and the deviation is based on a line of possession. I am out and I see possession of something like that and that 20 years, I do something and follow-up and say, hey, you ought to come to a line of agreement with your neighbor or file a quitclaim deed or do something. What they did is they recorded a survey, which is notice, constructive notice, to anybody in the land records. And you signed off on the record plats that he did for you, the parcel reconfiguration in 1919.

Q. Right. Okay.

A. So here it is, I am looking at it, it's kind of like you adopted that line. You guys never -- I don't believe you put like a confirmatory deed on it, on the record. You were still using the old descriptions.

Q. So you said at the beginning of this, you said Frederick wouldn't stand behind the survey?

A. Obviously, he did it, and I heard some talk, and I haven't followed up on it, but that you filed a complaint against him with the board. I don't know anything. I think that's what he said to me, that as far as his properties, he is not a happy camper.

Q. You just said he woudn't stand behind his survey?

A. Obviously, he signed and sealed it, and he thinks it's correct, but he wouldn't testify in court that it was correct. And I am willing to testify in court that it matches the title lines, except for the one place that it deviates. And there is no question in my mind that the creek is part of the Estes property. That's my position, the long and short of it. And I realize that, unlike your surveyor, I visited the site, but I haven't surveyed the site, and I am adopting and saying, I don't know him personally. I know of him. I know he's been a surveyor for a long time. The survey matches the historical lines from my other profession, looking at titles. That's the long and short of what I'm saying.

Q. Have you read this deed at Book 6070, Page 220, were you given that as a reason to see if it went along with Plat 10955?

A. I believe I have looked at this.

title to NN520 in order to rebut Mr. Nagel's opinion?

A. Certainly. If this goes to trial, I certainly will. And if I have a copy of Mr. Frederick's letter, I will read it, but I will certainly read both depositions, if this goes to trial. That's a given.

Q. Okay. And do you foresee that changing your opinion?

A. If something came up, but my basic opinion is that the lines were the same until the 1993 deviation, and the properties fit together and they deviated there. And the lines were based on the calls clearly on the creek on the Estes property.

Now, going back, that's historically going back. Then you look at things from a point of view from where we are today, is the water over into those points. It clearly says the west bank of the creek, the west bank. Creeks aren't -- they change.

Q. And the NN520 call to the creek is a monument?

A. It calls to the creek.

Q. Okay. I think that given your limited ability to really review what Mr. Nagel has done, as far as title, I would ask that if you are going to provide an opinion letter, that Mr. Estes re-produce you for further deposition so that I don't go to court with a

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IN THE CIRCUIT COURT FOR
WASHINGTON COUNTY, MARYLAND:

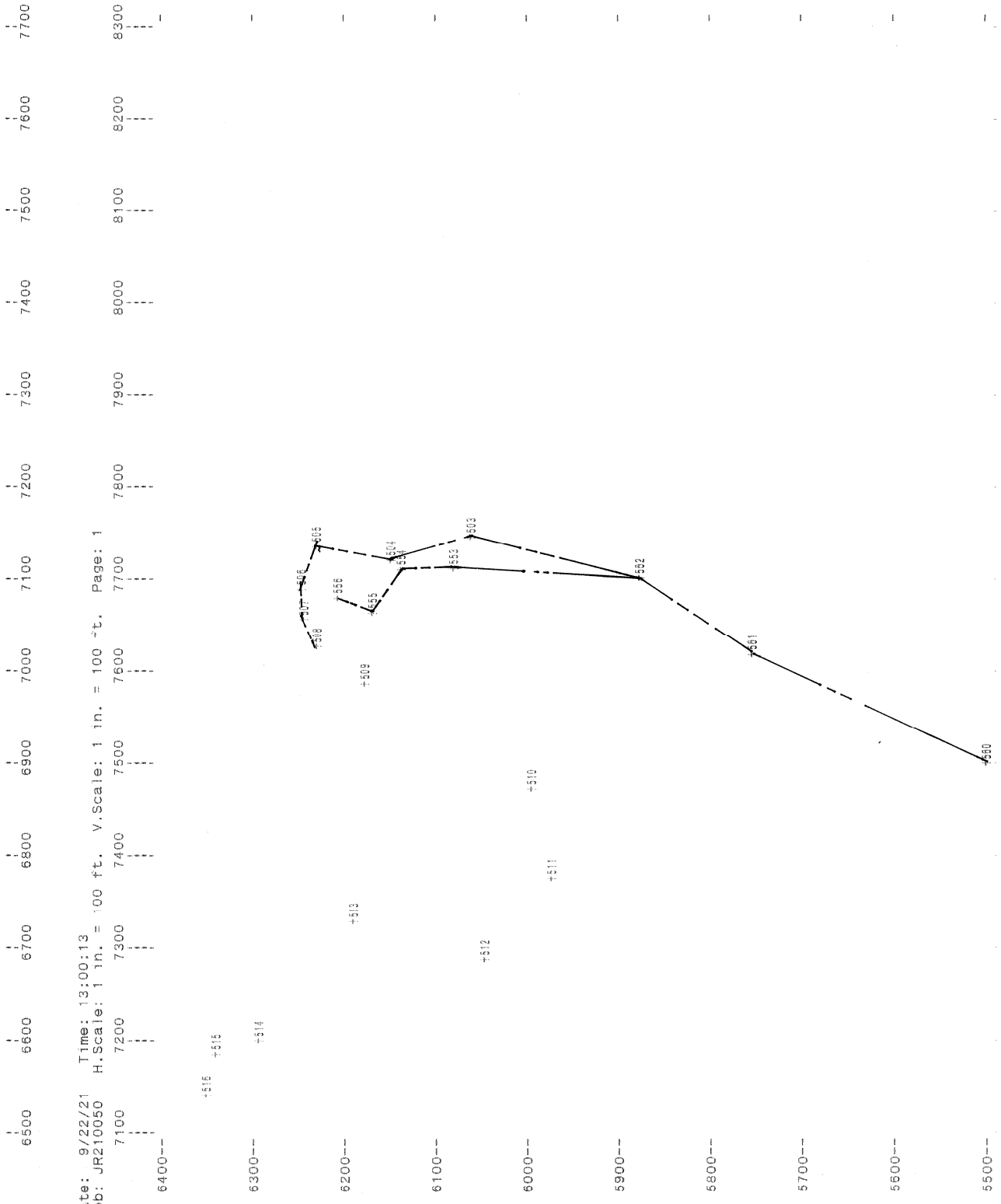
I, Jackie Smith, Court Reporter in and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct transcription of the deposition of John Dowling in the matter of Benjamin Estes vs. Justin Holder, Et Al, Case No. C-21-CV-20-000430 held on the 18th day of March, 2022.

Given under my hand this 22nd of June, 2022.

Jackie Smith

Jackie Smith, Court Reporter
P.O. Box 143, Boonsboro, MD 21713
(301) 326-5199

My Commission Expires: March 30, 2024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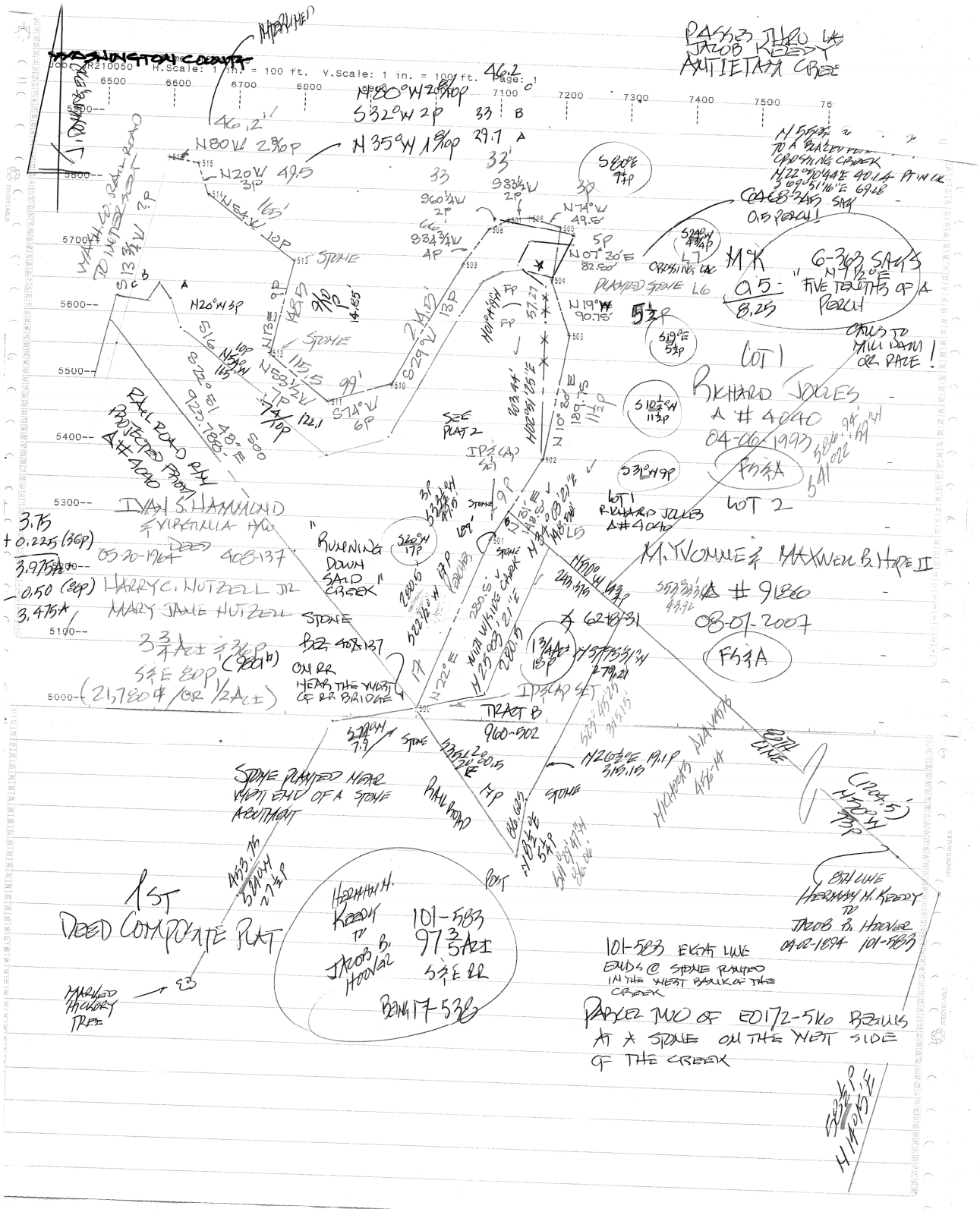
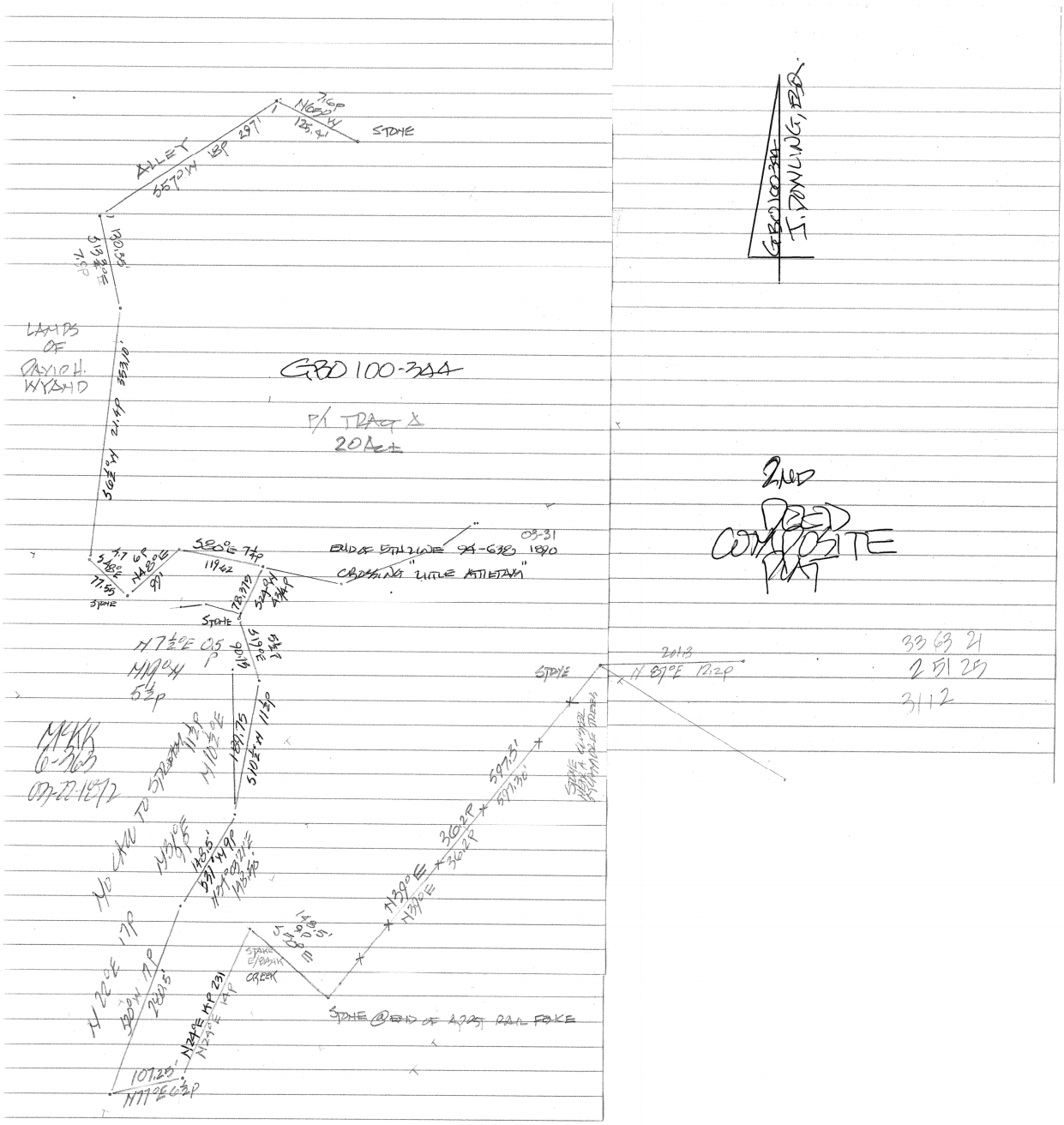
Job: JR210050 H.Scale: 1 in. = 100 ft. V.Scale: 1 in. = 100 ft. Page: 1
6500 6600 6700 6800 6900 7000 7100 7200 7300 7400 7500 7600 7700 7800 7900 8000 8100 8200 8300 8400
7100 7200 7300 7400 7500 7600 7700 7800 7900 8000 8100 8200 8300 8400
6400 6300 6200 6100 6000 5900 5800 5700 5600 5500
+516 +515 +514 +513 +512 +511 +510 +509 +508 +507 +506 +505 +504 +503 +502 +501 +500


WASHINGTON COUNTY
H.Scale: 1 in. = 100 ft. V.Scale: 1 in. = 100 ft.
PASSES THRU LA JACOB KEEDY ANTIETAM CREEK
1ST DEED COMPOSITE PLAT
RICHARD JOLLES A # 4040
04-06-1993
LOT 1
LOT 2
M. YVONNE & MAXWELL B. HOPE II
A # 9180
08-01-2007
FARM
IVAN S. HAMMOND & VIRGINIA HIS
DEED 408-137
05-20-1964
HARRY C. NUTZELL JR
MARY JANE NUTZELL
DEED 408-137
ON RR NEAR THE WEST END OF RR BRIDGE
RUNNING DOWN SAID CREEK
RAIL ROAD R/W PROTECTED FROM A # 4040
SEE PLAT 2
TRACT B
960-502
STONE PLANTED NEAR WEST END OF A STONE ABUTMENT
HERMAN H. KEEDY TO JACOB B. HOOVER
101-583
97 3/5 ACRES
BEING 17-538
101-583 EAST LINE ENDS @ STONE PLANTED IN THE WEST BANK OF THE CREEK
PARKER NW OF ED172-510 BEARS AT A STONE ON THE WEST SIDE OF THE CREEK
MARKED HICKORY TREE
EAST LINE HERMAN H. KEEDY TO JACOB B. HOOVER 04-02-1894 101-583
CROSSES CREEK
ON PORCH
M K
05-
8.25
6-303 SAYS N 72° E
FIVE TENTHS OF A PERCH
CALLS TO MILL DAM OR RACE!


GBD 100-344
P/ TRACT 5
20 Acres
2ND
DEED
COMPOSITE
PLAT
ALLEY
LANDS OF
DAYTON
WYSONG
STONE
STONE
STONE